

**U. S. Department of Energy,
National Nuclear Security Administration
Work for Others Agreement L-[####]**

Between

**Lawrence Livermore National Security, LLC
Operating Lawrence Livermore National Laboratory
under Prime Contract No. DE-AC52-07NA27344
for the U.S. Department of Energy,
National Nuclear Security Administration**

and

The Regents of the University of California [Insert name of the UC Campus]

The obligations of the above-identified National Nuclear Security Administration (NNSA) Contractor will apply to any successor in interest to said Contractor continuing the operation of the NNSA facility involved in this Work for Others Agreement.

Article I. PARTIES TO THE AGREEMENT

The Lawrence Livermore National Security, LLC (hereinafter "Contractor"), operating Lawrence Livermore National Laboratory for the U. S. Department of Energy, National Nuclear Security Administration, has been requested by The Regents of the University of California, [insert name of the Campus], (hereinafter "Sponsor"), to perform the work set forth in the Statement of Work, attached as Appendix A. The Contractor is obligated to comply with the terms and conditions of its Prime Contract with the United States Government (hereinafter "Government") represented by the United States Department of Energy, National Nuclear Security Administration (hereinafter "NNSA") when providing goods, services, products, processes, materials, or information to the Sponsor under this Agreement. It is also understood by the Parties that the Sponsor is obligated to comply with the terms and conditions of its external funding agreement (if any) with third parties who are providing the funds for this transaction. The Parties will be responsible for resolving any inconsistencies between any third party funding agreement and Contractor's Prime Contract with the Government, and consult with Government as needed, prior to taking any action which would violate either Party's governing agreement.

Article II. TERM OF THE AGREEMENT

The estimated period of performance for completion of the Statement of Work is [insert number] months. The term of this Agreement will be effective as of the latter date of (1) the date on which it is signed by the last of the Parties hereto, or (2) the date on which it is approved by NNSA, or (3) the receipt of the advance payment as required under Article IV.

Article III. COSTS

- A. The Contractor's estimated cost for the work to be performed under this Agreement is not to exceed \$[insert amount].
- B. The Contractor shall not incur costs and Sponsor shall not be obligated to make any payments under this Agreement in excess of the amount obligated in the absence of a written modification or notice from Sponsor authorized official.
- C. The Contractor agrees to provide at least [30] days' notice to the Sponsor if the actual cost to complete performance will exceed its estimated cost.

Article IV. FUNDING AND PAYMENT

The Sponsor will provide sufficient funds in advance to reimburse the Contractor for costs to be incurred in performance of the work described in this Agreement, and the Contractor will have no obligation to perform in the absence of adequate advance funds. If the estimated period of performance exceeds 90 days or the estimated cost exceeds \$25,000, the Sponsor may, with the Contractor's approval, advance funds incrementally. In such a case, the Contractor will initially invoice the Sponsor an amount sufficient to permit the work to proceed for at least [120] days and thereafter invoice the Sponsor monthly so as to maintain approximately a 90-day period that is funded in advance. Payment will be made directly to the Contractor. Upon termination or completion, any excess funds will be refunded by the Contractor to the Sponsor.

Article V. SOURCE OF FUNDS

The Sponsor hereby agrees that if the funding it brings to this Agreement has been secured through other agreements, such other

agreements do not have any terms and conditions (including intellectual property) that conflict with the terms of this Agreement.

Article VI. PROPERTY

Equipment is defined as non-expendable, tangible, personal property which has an acquisition cost of \$5,000 or more, is free-standing, and has a normal life expectancy of more than one year. Unless specifically stated in Appendix A, Statement of Work, any equipment with a value greater than \$5000 produced or acquired with the Sponsor's funds under this Agreement will be owned by the Sponsor and will be disposed of as directed by the Sponsor at the Sponsor's expense. Any equipment having a value of less than \$5000 produced or acquired under this Agreement will be owned by the Government. No Federal funds will be used to purchase property or equipment for this Agreement. Property or equipment produced or acquired as part of this Agreement will be accounted for and maintained during the term of the Agreement in the same manner as NNSA property or equipment.

Article VII. PUBLICATION MATTERS

Either Party may publish Generated Information as defined in Paragraph 1.A of Article XV. The publishing party will provide to the other Party for its review, a copy of the proposed publication 30 days prior to its intended publication. The other Party may request a reasonable delay in publication if the proposed publication contains unprotected patentable information, Computer Software, or Proprietary Information.

Article VIII. LEGAL NOTICE

The Parties agree that the following legal notice will be affixed to each report furnished to the Sponsor under this Agreement and to any report resulting from this Agreement which may be distributed by the Sponsor:

"DISCLAIMER

This document may contain research results that are experimental in nature, and neither the United States Government, any agency thereof, Lawrence Livermore National Security, LLC (LLNS), nor any of its employees makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not constitute or imply an endorsement or recommendation by the U.S. Government or the LLNS. The views and opinions of authors expressed herein do not necessarily reflect those of the U.S. Government or the LLNS and will not be used for advertising or product endorsement purposes."

Article IX. DISCLAIMER

THE GOVERNMENT AND THE CONTRACTOR MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS WORK FOR OTHERS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. NEITHER THE GOVERNMENT NOR THE CONTRACTOR WILL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS WORK FOR OTHERS AGREEMENT.

Article X. GENERAL INDEMNITY

To the extent permitted by State law and as authorized by the STANDING ORDERS of the Sponsor, the Sponsor agrees to indemnify and hold harmless the Government, NNSA, the Contractor, and persons acting on their behalf from all liability, including costs and expenses incurred, to any person, including the Sponsor, for injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of the Agreement by the Government, NNSA, the Contractor, or persons acting on their behalf, or arising out of the use of the services performed, materials supplied, or information given hereunder by any person including the Sponsor, and not directly resulting from the fault or negligence of the Government, NNSA, the Contractor, or persons acting on their behalf.

Article XI. PRODUCT LIABILITY

Except for any liability resulting from any negligent acts or omission of the Government or the Contractor, the Sponsor agrees to hold harmless the Government and the Contractor for all damages, costs, and expenses, including attorney's fees, arising from

personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the Sponsor, its assignees, or licensees, which was derived from the work performed under this Work for Others Agreement.

Article XII. INTELLECTUAL PROPERTY INDEMNITY - LIMITED

To the extent permitted by State law, the Sponsor will indemnify the Government and the Contractor and their officers, agents, and employees against liability, including costs, for infringement of any U.S. patent, copyright, or other intellectual property arising out of any acts required or directed by the Sponsor to be performed under this Agreement to the extent such acts are not already performed at the facility. Such indemnity will not apply to a claimed infringement that is settled without the consent of the Sponsor unless required by a court of competent jurisdiction.

Article XIII. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

The Sponsor will report to NNSA and the Contractor, promptly and in reasonable written detail, each claim of patent or copyright infringement based on the performance of this Agreement of which the Sponsor has knowledge. The Sponsor will furnish to NNSA and the Contractor, when requested by NNSA or the Contractor, all evidence and information in the possession of the Sponsor pertaining to such claim.

Article XIV. PATENT RIGHTS - USE OF FACILITIES (CLASS WAIVER)

1. Definitions

- A. "Subject Invention" means any invention or discovery of the Contractor, or, to the extent the Sponsor is performing any work under this Agreement (at LLNL), of the Sponsor, conceived in the course of or under this Agreement, or, in the case of an invention previously conceived by the Sponsor, first actually reduced to practice in the course of or under this Agreement. "Subject Invention" includes any art, method, process, machine, manufacture, design or composition of matter, or any new and useful improvement thereof, or any variety of plant, whether patented under the Patent Laws of the United States of America or any foreign country, or unpatented.
- B. "Patent Counsel" means the NNSA Patent Counsel assisting the procuring activity which has the administrative responsibility for the facility where the work under this Agreement is to be performed. NNSA Patent Counsel may be contacted at: NNSA Office of Chief Counsel, Albuquerque Service Center, Intellectual Property Law Division, P.O. Box 5400, Albuquerque, New Mexico 87185-5400; phone (505) 845-5322.

2. Rights of the Sponsor - Election to Retain Rights

- A. Subject to the provisions of paragraph 4.B, with respect to any Subject Invention reported and elected in accordance with paragraph 5.A, the Sponsor may elect to obtain the entire right, title and interest throughout the world to each Subject Invention made by the Sponsor's employees and any patent application filed in any country on a Subject Invention and in any resulting patent secured by the Sponsor. Where appropriate, the filing of patent applications by the Sponsor is subject to NNSA and other Government security regulations and requirements.

B. [RESERVED]

3. Rights of the Contractor - Election to Retain Rights

With respect to any Subject Invention reported in accordance with paragraph 5.B. of this Article, the Contractor may elect to obtain title to each Subject Invention made by the Contractor's employees in accordance with its Prime Contract.

4. Rights of Contractor and Government

A. Assignment to the Contractor or the Government

The Sponsor agrees to assign to either the Contractor or the Government, as requested by the Contractor, the entire right, title, and interest in any country to each Subject Invention of the Sponsor and to each Subject Invention of the Contractor, where the Sponsor:

- (1) does not elect pursuant to this article to retain such rights; or
- (2) elects to obtain title to a Subject Invention pursuant to paragraph 2. but fails to have a patent application filed in that country on the Subject Invention or decides not to continue prosecution or not to pay any maintenance fees for

the resulting patent(s).

B. Terms and Conditions of Waived Rights

- (1) To preserve the Contractor's and the Government's residual rights to Subject Inventions, and in patent applications and patents on Subject Inventions, the Sponsor will take all actions in reporting, electing, filing on, prosecuting, and maintaining invention rights promptly, but in any event, in sufficient time to satisfy domestic and foreign statutory and regulatory time requirements; or, if the Sponsor decides not to take appropriate steps to protect the invention rights, it will notify the Contractor or Patent Counsel in sufficient time to permit either the Contractor or the Government to file, prosecute, and maintain patent applications and any resulting patents prior to the end of such domestic or foreign statutory or regulatory time requirements.
- (2) The Sponsor will convey or ensure the conveyance of any executed instruments necessary to vest in either the Contractor or the Government the rights set forth in this article.
- (3) With respect to any Subject Invention in which the Sponsor obtains title, the Sponsor hereby grants to the Government a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced by or on behalf of the United States the Subject Invention throughout the world.
- (4) The Sponsor will provide the Government a copy of any patent application filed on a Subject Invention within 6 months after such application is filed, including its serial number and filing date.
- (5) The Sponsor agrees to include, within the specification of any U.S. patent applications and any patent issuing thereon covering a Subject Invention in which the Sponsor obtains title, the following statement: "The Government has rights in this invention pursuant to (specify this underlying Agreement)."
- (6) Preference for U.S. Industry. Notwithstanding any other provision of this article, the Sponsor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the U.S. unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by NNSA upon a showing by the Sponsor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible.
- (7) March-In Rights. The Sponsor agrees that with respect to any Subject Invention in which it has acquired title, the NNSA will retain the right to require the Sponsor to grant a responsible applicant a non-exclusive, partially exclusive, or exclusive license to use the Subject Invention in any field of use, on terms that are reasonable under the circumstances, or if the Sponsor fails to grant such a license, to grant the license itself. NNSA may exercise this right only in exceptional circumstances and only if NNSA determines that:
 - (a) the action is necessary to meet health or safety needs that are not reasonably satisfied by the Sponsor; or
 - (b) the action is necessary to meet the requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Sponsor; or
 - (c) such action is necessary because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of the agreement required by paragraph 4.B.(6).
- (8) The Sponsor agrees to refund any amounts received as royalty charges on any Subject Invention in procurement by or on behalf of the Government and to provide for that refund in any instrument transferring rights to any party in the Subject Invention.
- (9) With respect to any Subject Invention in which the Contractor obtains title, the Contractor hereby grants to the Sponsor a non-exclusive, nontransferable, irrevocable, paid-up license to practice such Subject Invention for Sponsor's research and education.

5. Invention Identification, Disclosures, and Reports

- A. The Contractor will report its Subject Inventions to NNSA in accordance with its Prime Contract. In addition, the Contractor will disclose to the Sponsor at the same time as disclosure to NNSA any Subject Inventions made by the Contractor under this Agreement.

- B. The Sponsor will furnish the Patent Counsel a written report containing full and complete technical information concerning each Subject Invention it makes within 6 months after conception or first actual reduction to practice, whichever occurs first, in the course of or under this Agreement, but in any event prior to any on sale, public use, or public disclosure of such invention known to the Sponsor. The report will identify the contract and inventor(s) and will be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any election of invention rights under this article. When an invention is reported under this paragraph 5.B, it will be presumed to have been made in the manner specified in Section (a)(1) and (2) of 42 U.S.C. 5908.
- C. Requests for extension of time for election under subparagraphs A and B may be granted by NNSA Patent Counsel for good cause shown in writing.
6. Facilities License

Nothing contained in this patent rights article shall be deemed to give the Government any rights with respect to any invention other than a Subject Invention except as set forth in this paragraph. In addition to the rights of the Parties with respect to Subject Inventions, the Sponsor hereby grants to the Government an irrevocable, non-exclusive, paid-up license to (1) practice or to have practiced by or for the Government at the facility, and (2) transfer such license with the transfer of the facility, any inventions or discoveries regardless of when conceived or first actually reduced to practice or acquired by the Sponsor, which at any time, through completion of this Agreement, are owned or controlled by the Sponsor and are incorporated in the facility as a result of this Agreement to such an extent that the facility is not restored to the condition existing prior to the Agreement. The acceptance or exercise by the Government of the aforesaid rights and license will not prevent the Government at any time from contesting the enforceability, validity, scope of, or title to, any rights or patents herein licensed.

7. Background Intellectual Property

The Contractor may use separately developed background intellectual property in performing work under this Agreement. The Contractor has used its best efforts to identify and list any such background intellectual property below. The Sponsor is not granted any rights, either express or implied, to this intellectual property under this Agreement. Contractor provides this information solely to comply with its Prime Contract and to put the Sponsor on notice that licenses to background intellectual property may be necessary to practice intellectual property made under this Agreement.

[List any background intellectual property or indicate "NONE IDENTIFIED"]

8. Early Termination of Agreement

If the Agreement is terminated before completion of the Statement of Work, then the terms and conditions of this article will survive the Agreement.

Article XV. RIGHTS IN TECHNICAL DATA - USE OF FACILITY

1. Definitions
- A. "Generated Information" means information produced in the performance of this Agreement by the Contractor or the Sponsor.
- B. "Proprietary Information" means information which is developed at private expense, is marked as Proprietary Information, and embodies (1) trade secrets or (2) commercial or financial information which is privileged or confidential under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).
- C. "Unlimited Rights" means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- D. "Computer Software" means computer programs, computer software databases, and computer software documentation thereof produced in the performance of this Agreement by the Contractor.
2. The Sponsor agrees to furnish to the Contractor or leave at the facility that information, if any, which is (1) essential to the performance of work by the Contractor personnel or (2) necessary for the health and safety of such personnel in the performance of the work. Any information furnished to the Contractor will be deemed to have been delivered with

Unlimited Rights unless marked as Proprietary Information. The Sponsor agrees that it has the sole responsibility for appropriately identifying and marking all documents containing Proprietary Information, whether such documents are furnished by the Sponsor or produced under this Agreement and made available to the Sponsor for review.

3. The Government and Contractor agree not to disclose properly marked Proprietary Information to anyone other than the Sponsor without written approval of the Sponsor, except to Government employees who are subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secrets Act (18 U.S.C. 1905). The Government and Contractor will have the right, at reasonable times up to three years after the termination or completion of the Agreement, to inspect any information designated as Proprietary Information by the Sponsor, for the purpose of verifying that such information has been properly identified as Proprietary Information.
4. The Sponsor is solely responsible for the removal of all of its Proprietary Information from the facility by or before termination of this Agreement. The Government and Contractor will have Unlimited Rights in any information that (1) is not removed from the facility by termination of this Agreement, or (2) is incorporated into the facility or equipment under this Agreement to such extent that the facility or equipment is not restored to the condition existing prior to such incorporation.
5. The Sponsor has Unlimited Rights in Generated Information that Sponsor first produces in the performance of this Agreement. The Sponsor will have Unlimited Rights in Generated Information produced by the Contractor, except Computer Software and information that is disclosed in a Subject Invention disclosure being considered for patent protection. Sponsor will treat Computer Software in accordance with any notice or restrictive legend placed thereon. The Sponsor may receive from the Contractor, upon submission of a written request made within six months of termination of this Agreement, a non-exclusive, world-wide, non-transferable, paid-up license to Computer Software in which the Contractor has been given permission to assert copyright in accordance with its prime contract.
6. The Government, the Contractor, and the Sponsor will have Unlimited Rights in all Generated Information produced or information provided by the Parties under this Agreement, except for information that is disclosed in a Subject Invention disclosure being considered for patent protection, or that is marked as being Proprietary Information.
7. The Sponsor agrees to provide to the Contractor for the Department a nonproprietary description of the work performed under this Agreement.
8. If the Agreement is terminated before completion of the Statement of Work, then the terms and conditions of this article will survive the Agreement.

Article XVI. ASSIGNMENT

Neither this Agreement nor any interest therein or claim thereunder will be assigned or transferred by either Party, except as authorized in writing by the other Party to this Agreement, provided, the Contractor may transfer it to NNSA, or its designee, with notice of such transfer to the Sponsor, and the Contractor will have no further responsibilities except for any confidentiality, use and non-disclosure obligations of this Agreement.

Article XVII. SIMILAR OR IDENTICAL SERVICES

The Government and the Contractor will have the right to perform similar or identical services in the Statement of Work for other Sponsors as long as the Sponsor's Proprietary Information is not used.

Article XVIII. EXPORT CONTROL

Each Party is responsible for its own compliance with laws and regulations governing export control.

Article XIX. TERMINATION

- A. Performance of work under this Agreement may be terminated at any time by either Party, without liability, except as provided above, upon giving a [30] day written notice to the other Party. The Contractor will terminate this Agreement only when the Contractor determines, after direction from NNSA, that such termination is (1) in the best interest of the Government, or (2) if the Sponsor has failed to advance the funds required by Article IV. In the event of termination, the Sponsor will be responsible for the Contractor's costs (including close-out costs), through the effective date of termination, but in no event will the Sponsor's cost responsibility exceed the total cost to the Sponsor as described in Article III, above.
- B. Any obligations of the Parties regarding Proprietary Information or other intellectual property will survive early termination

of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

FOR LAWRENCE LIVERMORE NATIONAL SECURITY, LLC AS MANAGEMENT AND
OPERATING CONTRACTOR FOR THE LAWRENCE LIVERMORE NATIONAL LABORATORY:

Name: _____

Title: _____

Date: _____

FOR REGENTS OF THE UNIVERSITY OF CALIFORNIA, _____ CAMPUS:

Name: _____

Title: _____

Date: _____

